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*Wm. H. Werth*, of Tazewell, and *M. M. Long*, of St. Paul, for plaintiff in error.

*Burns & Kelly*, of Lebanon, *E. M. Fulton*, of Wise, and *Morrison & Robertson*, of Big Stone Gap, for defendant in error.

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COMMONWEALTH et al. v. UNITED CIGARETTE MACH.  
CO., Limited.

Sept. 14, 1916.

[89 S. E. 935.]

**1. Taxation (§ 166\*)—Intangible Property—Foreign Corporations.**

—A corporation chartered in England and authorized to do business in any part of the world established its principal office in the state of Virginia, wherein it manufactured the machines it sold and transacted all other business which included that of lending money. The main office was transferred from England to Virginia to escape payment of English income taxes. Code 1904, § 1103b, as amended by Act Feb. 14, 1912 (Acts 1912, c. 29) provides that corporations chartered or organized under laws of other states or countries and authorized to manufacture articles made from metal, cotton, or wood, and to mine ores or coals, may carry on in Virginia the business authorized by their charters, and shall for all purposes be deemed and treated as local corporations. The foreign corporation manufactured cigarette making machines principally of metal. Held that, despite the ordinary rule that intangible property is taxable only at the domicile of the owner, the corporation acquired a commercial domicile in the state of Virginia, and its intangible property was taxable therein.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 288, 294; Dec. Dig. § 166.\* 13 Va.-W. Va. Enc. Dig. 101.]

**2. Statutes (§ 121 (1)\*)—Title of Act—Construction.**—Code 1904, § 1103b as amended by Act Feb. 14, 1912, entitled "An act to enable certain mining and manufacturing corporations of other states and countries to conduct operations in the states" confers on such corporations in the body of the act the right to carry on their business within the state, but subjects them to the state laws, which include state tax laws. Held, that the provisions of the act are germane to the title.

[Ed. Note.—For other cases, see Statute, Cent. Dig. §§ 146, 173; Dec. Dig. § 121 (1).\* 12 Va.-W. Va. Enc. Dig. 761.]

**3. Corporations (§ 639\*)—Foreign Corporations—Statutory Provisions.**—Those provisions in the act declaring that foreign corporations shall be treated as domestic corporations do not render the act invalid on the theory that it violates Const., § 50, requiring a law imposing

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

a tax to specifically state such tax, for the act does not impose a tax, but merely authorizes foreign corporations to do business in the state subject to the same rules governing domestic corporations, including the assessment of taxes.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 2530, 2531; Dec. Dig. 639.\* 6 Va.-W. Va. Enc. Dig. 197.]

**4. Corporations (§ 634\*)—Foreign Corporations—Legislative Attempt to Domesticate.**—Such act is not invalid as an attempt by the Legislature to domesticate foreign corporations, the act merely authorizing such corporations to do business within the state, and providing that, if they do, they shall be subject to the same rules governing domestic corporations.

[Ed. Note.—For other cases see Corporations, Cent. Dig. §§ 2497-2502; Dec. Dig. § 634.\* 6 Va.-W. Va. Enc. Dig. 197.]

**5. Taxation (§ 166\*)—Property Subject to Tax—Foreign Corporations.**—Const. § 168, declares that all property shall be taxed, that taxation shall be uniform, and shall be under general laws. Tax Bill, § 8, schedule C as amended by Acts 1908, c. 213, relating to taxation of intangible property, includes in the first subdivision bonds, notes and other evidence of debt. The second includes all capital of individuals including moneys or other things loaned, used, or employed out of the state. The third relates to capital of incorporated joint stock companies not otherwise taxed providing that when all of such capital is taxed by the state, the shares of stock in the hands of individual shareholders shall not be further taxed, and that real estate belonging to such companies shall not be treated as capital but shall be listed and taxed as land. Subdivision 4 relates to the invested capital of individuals. Code 1904, § 494, declares that the commissioner or his qualified deputies shall on personal application of each person, firm, or corporation residing, doing business, or having an office in his district obtain answers or interrogatories addressed to such person, firm, or corporation in order to ascertain the extent of his or its property. Held that, notwithstanding the first subdivision of § 8 provides that the commissioner of revenue shall obtain from each person, natural or artificial, residing, in his district, city, or town a list of all bonds or other evidence of indebtedness, the law applies to a foreign corporation doing a manufacturing business in the state, and the intangible property of such a corporation is taxable the same as that of domestic corporations.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 288, 294; Dec. Dig. § 166.\* 13 Va.-W. Va. Enc. Dig. 89.]

**6. Taxation (§ 167\*)—Foreign Corporation—"Capital."**—Tax Bill, § 8, schedule C, subd. 4, including the capital of individuals invested or employed in any business not otherwise taxed defines capital as

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

moneys and credits actively used and employed in carrying on the business, materials, goods, and merchandises on hand, and all solvent bonds or claims made or contradicted in the course of business; real estate not being listed as capital, but as land. Held, that the definition of "capital" therein used is applicable to other subdivisions, and therefore applies to assessment of taxes under other subdivisions against a foreign corporation doing a manufacturing business in the state, and machines manufactured, as well as those in the process of manufacturing, together with bonds and other evidence of indebtedness due such corporation, are capital, and must be so treated.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 290; Dec. Dig. § 167.\* 16 Va.-W. Va. Enc. Dig. 1184.]

For other definitions, see Words and Phrases, First and Second Series, Capital.]

**7. Taxation (§ 838\*)—Omitted Taxes—Penalty.**—Code 1904, § 603, as amended by Act Feb. 20, 1906 (Acts 1906, c. 41), declares that any person failing to pay any state, county, or city tax by the 1st day of December shall incur a penalty of 5 per cent. which shall be added to the amount of the taxation. The law imposes two obligations on a taxpayer, first, to disclose his taxable property, and then to pay the tax assessed. Held that, where defendant did not disclose its possession of intangible property on which it was taxable, and no tax was assessed, the property being subsequently discovered, defendant is liable for the penalty.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1653, 1654; Dec. Dig. § 838.\* 13 Va.-W. Va. Enc. Dig. 123.]

**8. Taxation (§ 840\*)—Assessment—Omitted Tax—Interest.**—Code 1904, § 508, provides that, if the commissioner ascertains that any person or real or personal property has not been assessed for taxation, that the same has been assessed at less than the law requires, or that taxes have not been realized, it shall be the duty of the commissioner to list the same and assess taxes thereon at the rate prescribed adding interest at the rate of 6 per cent. A taxpayer instituted a proceeding to obtain exoneration from taxation, and in such proceeding it was discovered the taxpayer had escaped taxation on a considerable part of its property. Held, the tax being assessed in such proceeding, interest was properly added.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1656; Dec. Dig. § 840.\* 13 Va.-W. Va. Enc. Dig. 123.]

Error to Circuit Court, Campbell County.

Application by the United Cigarette Machine Company, Limited, to be exonerated from payment of taxes levied against it on intangible personal property, opposed by the Commonwealth of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digest and Indexes.

Virginia, Campbell County, and Blackwater District. There was a judgment granting applicant part of the relief sought, and the Commonwealth, County and District bring error. Reversed and remanded.

The Attorney General, *Volney E. Howard*, of Lynchburg, and *A. H. Light*, of Rustburg, for plaintiffs in error.

*John G. Haythe* and *F. S. Kirkpatrick*, both of Lynchburg, for defendant in error.

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CONNECTICUT FIRE INS. CO. *v.* W. H. ROBERTS LUMBER CO.

Sept. 11, 1916.

[89 S. E. 945.]

**1. Insurance (§ 507\*)—Fire Policies—Construction.**—A fire policy, insuring lumber and staves owned or held in trust or commission by plaintiff, while stacked or plied at its various mill sets or yards or shipping points, does not extend to plaintiff's profits which might result from its handling of lumber.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1283; Dec. Dig. § 507.\* 6 Va.-W. Va. Enc. Dig. 95.]

**2. Evidence (§ 405 (1)\*)—Parol Evidence Rule—Fire Policy.**—The parol evidence rule in all its vigor applies to fire policies, and cannot be resorted to to vary the terms of the written policy save in case of latent ambiguity.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1818, 1819; Dec. Dig. § 405 (1).\* 10 Va.-W. Va. Enc. Dig. 659.]

**3. Evidence (§ 450 (5)\*)—Parol Evidence—Fire Policies.**—A fire policy covering any interest plaintiff might have in lumber at the time of its destruction does not include profits; therefore, where an agent of the insurer and plaintiff agreed that the policy should cover any such interest, parol evidence showing that fact is not admissible to show that the policy included profits; there being no meeting of the minds of the parties on that question.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2071; Dec. Dig. § 450 (5).\* 10 Va.-W. Va. Enc. Dig. 650.]

**4. Appeal and Error—1175 (5)\*)—Review—Reversal.**—Where plaintiff could not, under any theory under the evidence, recover, a judgment for plaintiff will be reversed without remand.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4579; Dec. Dig. § 1175 (5).\* 1 Va.-W. Va. Enc. Dig. 632.]

Error to Circuit Court, Wise County.

Action by the W. H. Roberts Lumber Company against the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digest and Indexes.